

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EARL FORSYTHE,

Plaintiff,

- against -

ALLIEDBARTON SECURITY SERVICES, et al.,

Defendants.

**USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-23-10**

**REPORT AND
RECOMENDATION**

09 Civ. 8414 (SHS) (RLE)

To the HONORABLE SIDNEY H. STEIN, U.S.D.J.:

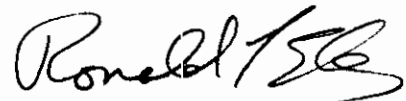
A District Court may dismiss a case for failure to serve a defendant within 120 days. Fed. R. Civ. P. Rule 4(m); *see Zapata v. City of New York*, 502 F.3d 192, 197 (2d Cir. 2007). Pro se Plaintiff Earl Forsythe filed his Complaint in the instant action on October 5, 2009. The Court held a conference on January 14, 2010, and, prior to the conference, had sent notice of it to Forsythe at the address on file with the Court. Forsythe attended the conference, and he acknowledged the Court's instruction that he serve Defendants or risk having his claims dismissed. On January 19, 2010, the Court ordered Forsythe to serve Defendants by January 28, 2010, or SHOW CAUSE why he had not completed service. A copy of the order was sent to Forsythe's address. In the order, the Court noted that a failure to respond might result in the dismissal of his case. To date, more than 160 days have elapsed since the Complaint was filed, and Forsythe has failed to serve any Defendants. Therefore, the Court recommends that Forsythe's case be **DISMISSED** without prejudice for failure to serve Defendants.

Pursuant to Rule 72, Federal Rules of Civil Procedure, the parties shall have fourteen (14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of

the Court and served on all adversaries, with extra copies delivered to the chambers of the Honorable Sidney H. Stein, 500 Pearl Street, Room 1010, and to the chambers of the undersigned, Room 1970. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. § 636(b)(1) (West Supp. 1995); Fed. R. Civ. P. 72, 6(a), 6(d).

DATED: March 23, 2010
New York, New York

Respectfully Submitted,



The Honorable Ronald L. Ellis
United States Magistrate Judge

Copies of this Report and Recommendation were sent to:

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